

IC 34-25-2

Chapter 2. Attachment

IC 34-25-2-1

Attachment of property at or after filing complaint

Sec. 1. (a) At or after the time of filing a complaint, the plaintiff may have an attachment against the property of the defendant, in the cases described in subsection (b) and in the manner described in this chapter.

(b) The plaintiff may attach property when the action is for the recovery of money and the defendant:

- (1) is, or one (1) of several defendants is, a foreign corporation or a nonresident of Indiana;
- (2) is, or one (1) of several defendants is, secretly leaving or has left Indiana with intent to defraud the defendant's creditors;
- (3) is concealed so that a summons cannot be served upon the defendant;
- (4) is removing or about to remove the defendant's property subject to execution, or a material part of the property, outside Indiana, not leaving enough behind to satisfy the plaintiff's claim;
- (5) has sold, conveyed, or otherwise disposed of the defendant's property subject to execution, or permitted the property to be sold with the fraudulent intent to cheat, hinder, or delay the defendant's creditors; or
- (6) is about to sell, convey, or otherwise dispose of the defendant's property subject to execution with the fraudulent intent to cheat, hinder, or delay the defendant's creditors.

(c) The plaintiff is entitled to an attachment for the causes mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the cause of action is due or not.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-2

Attachment barred while debtor's spouse and family reside within county; limitation on debtor's absence

Sec. 2. (a) Except as provided in subsection (b), an attachment, may not issue against any debtor while the debtor's spouse and family remain settled within the county where the debtor usually resided before the debtor's absence, if the debtor does not remain absent from Indiana more than one (1) year.

(b) This section does not apply if:

- (1) the attachment is requested in a cause of action described in section 1(b)(4), 1(b)(5), or 1(b)(6) of this chapter; or
- (2) an attempt is made to conceal the debtor's absence.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-3

Concealment of debtor's absence by spouse or family

Sec. 3. If the spouse or family of the debtor:

(1) refuse or are unable to:
 (A) account for the debtor's absence; or
 (B) indicate the place where the debtor may be found; or
(2) give a false account of the debtor's absence or place where the debtor may be found;
the refusal, inability, or false account is considered an attempt to conceal the debtor's absence for the purposes of this chapter.
As added by P.L.1-1998, SEC.20.

IC 34-25-2-4

Plaintiff's affidavit

Sec. 4. The plaintiff or a person representing the plaintiff shall make an affidavit showing:

- (1) the nature of the plaintiff's claim;
- (2) that the plaintiff's claim is just;
- (3) the amount that the plaintiff ought to recover; and
- (4) that one (1) of the grounds for an attachment enumerated in section 1 of this chapter is present.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-5

Plaintiff's undertaking

Sec. 5. The plaintiff or a person representing the plaintiff shall execute a written undertaking, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will:

- (1) duly prosecute the proceeding in attachment; and
- (2) pay all damages that may be sustained by the defendant if the proceedings of the plaintiff are wrongful and oppressive.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-6

Order of attachment

Sec. 6. Upon the filing of the affidavit and written undertaking in the office of the clerk, the clerk shall issue an order of attachment, which shall be directed and delivered to the sheriff. The order of attachment must require the sheriff to seize and take into possession the property of the defendant in the county that is not exempt from execution.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-7

Issuance of order to sheriff of other county; orders issued simultaneously or in succession; recovery of costs

Sec. 7. Orders of attachment may be issued to the sheriff of any other county, and several orders of attachment may, at the option of the plaintiff, be issued at the same time or in succession. Only the costs of orders of attachment that have been executed in whole or in part shall be recovered against the defendant unless otherwise directed by the court.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-8

Issuance of execution of order on Sunday

Sec. 8. An order of attachment may be issued and executed on Sunday, if the plaintiff's affidavit shows that the defendant is about to abscond on that day, to the injury of the plaintiff.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-9

Assistance of householder; inventory; appraisalment

Sec. 9. The sheriff shall proceed, with the assistance of a disinterested and credible householder of the county, to:

- (1) attach the lands, tenements, goods, and chattels of the defendant, subject to execution; and
- (2) make an inventory and appraisalment of the property described in subdivision (1) and return the inventory and appraisalment with the order.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-10

Order becomes lien on property

Sec. 10. An order of attachment binds the defendant's property in the county subject to execution and becomes a lien on the property from the time of the delivery of the order to the sheriff, in the same manner as an execution.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-11

Order in which property taken; pursuing property in another county

Sec. 11. (a) The sheriff shall first take the defendant's personal property under an attachment.

(b) If the sheriff does not find enough personal property of the defendant to satisfy the plaintiff's claim and costs of the action, then the sheriff shall take the defendant's real estate under attachment.

(c) If any property of the defendant is removed from the county after an order of attachment is placed in the hands of the sheriff, the sheriff may pursue and attach the property in any county within three (3) days after the removal.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-12

Undertaking by defendant or person having possession of property

Sec. 12. The defendant or other person who has possession of attached property may have the property, or any part of the property, delivered to the defendant or person by executing and delivering to the sheriff a written undertaking, with surety, to be approved by the sheriff, payable to the plaintiff, to the effect that:

- (1) the property shall be:

(A) properly kept and taken care of; and
(B) delivered to the sheriff on demand, or so much of the property as may be required to be sold on execution to satisfy any judgment that may be recovered against the defendant or person in the action; or
(2) the defendant or person will pay the appraised value of the property, not exceeding the amount of the judgment and costs.
As added by P.L.1-1998, SEC.20.

IC 34-25-2-13

Third party's duty to prosecute claim

Sec. 13. Whenever any person other than the defendant claims any property attached, the right of property may be tried as in cases of property taken in execution, and the claimant, having notice of the attachment, shall be bound to prosecute the claim as in such cases or be barred of the right.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-14

Duty of defendant or claimant to give information under oath

Sec. 14. The defendant or claimant of any attached property may be required by the court to appear and give information, under oath, respecting the property.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-15

Lien on goods attached in hands of consignee

Sec. 15. Goods attached in the hands of a consignee are subject to a lien for any debt due the consignee from the consignor.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-16

Undertaking by defendant; discharge of attachment; restitution of property

Sec. 16. If the defendant or other person representing the defendant, at any time before judgment, executes a written undertaking to the plaintiff with sufficient surety, to be approved by the court, clerk, or sheriff, to the effect that the defendant will:

- (1) appear in the action; and
- (2) perform the judgment of the court;

the attachment shall be discharged and restitution made of any property taken under the attachment or the proceeds of the property.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-17

Property that is perishable or expensive to keep; procedure for sale at public auction

Sec. 17. When attached personal property is perishable in nature or expensive to keep, the court may direct the sheriff to sell the property at public auction upon reasonable notice. If the property is

liable to immediate damage, the sheriff may sell the property by giving ten (10) days notice, without an order of court, and the proceeds of all sales shall be deposited with the clerk.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-18

Allowance of sheriff's expenses of keeping attached property

Sec. 18. The sheriff shall be allowed by the court the necessary expenses of keeping the attached property, to be paid by the plaintiff and taxed in the costs.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-19

Effect of dismissal by first attaching creditor

Sec. 19. (a) This section applies when the first attaching creditor dismisses the action or proceedings in attachment.

(b) A dismissal described in subsection (a) does not operate as a dismissal of the action or proceedings of any subsequent attaching creditor.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-20

Motion for discharge and restitution; undertaking; judgment for plaintiff

Sec. 20. (a) After appearing in the action, a defendant against whom an order of attachment has been issued may move to have:

- (1) the attachment discharged; and
- (2) restitution awarded for any property taken under the attachment.

(b) An appearance in the action may not operate to discharge the attachment unless the defendant files a written undertaking as required in section 16 of this chapter.

(c) If:

- (1) the defendant appears in the action;
- (2) judgment is rendered in favor of the plaintiff; and
- (3) part of the judgment remains unsatisfied after exhausting the property attached;

the judgment is considered a judgment against the defendant personally.

(d) A judgment described in subsection (c) has the same force and effect as other judgments, and execution shall issue on the judgment accordingly for the collection of the residue.

(e) If the plaintiff's undertaking is insufficient, the plaintiff is entitled to a reasonable time to file an additional undertaking.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-21

Judgment for defendant; appeal

Sec. 21. (a) Except as provided in subsection (b), if the judgment in the action is rendered for the defendant:

- (1) the attachment shall be discharged; and
- (2) the attached property or proceeds from the property shall be returned to the defendant.

(b) If the plaintiff:

- (1) serves notice with the clerk or judge within seventy-two (72) hours that the plaintiff:

(A) intends to appeal from the judgment; and

(B) will file a bond, approved by the court; and

- (2) files an appeal, as provided by law, within sixty (60) days from the date of the judgment;

the attachment or any bond given to release the property or thing attached shall not be discharged, and the attached property or proceeds from the property shall not be returned to the defendant until final disposition of such action.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-22

Judgment for plaintiff; execution

Sec. 22. After judgment for the plaintiff or one (1) or more of several plaintiffs, attached property that remains unsold may be sold on execution, as in other cases.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-23

Action on undertaking; damages

Sec. 23. Every defendant is entitled to an action on the written undertaking of the plaintiff or creditor by whose proceedings in attachment the defendant is aggrieved, if it appears that the proceedings were wrongful and oppressive. The defendant shall recover damages at the discretion of the jury.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-24

Actions in name of state

Sec. 24. In all actions in the name of the state of Indiana, or of any person, agent, or officer, for the use of the state, if process is returned indicating that the defendant was not found, an order of attachment may be issued and proceedings may be had, as in other cases, without filing an affidavit or a written undertaking.

As added by P.L.1-1998, SEC.20.

IC 34-25-2-25

Order executed and discharged; return

Sec. 25. When an order of attachment is fully executed or discharged, the sheriff shall return the order to the court, with the sheriff's proceedings noted upon the order.

As added by P.L.1-1998, SEC.20.